IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

MICHAEL KLEINMAN,	§	
MMK HOLDINGS, LP and	§	
AUSPRO ENTERPRISES, LP	§	
	§	
Plaintiffs,	§	
V.	§	CIVIL ACTION NO. 1:22-cv-00527-LY
	§	
CITY OF CEDAR PARK	§	
	§	
Defendant.	§	

APPENDIX TO DEFENDANT'S MOTION TO DISMISS PLANTIFFS' FIRST AMENDED COMPLAINT AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF [DKT 11]

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant CITY OF CEDAR PARK ("City") and files this its Appendix to its Motion to Dismiss Plaintiffs' First Amended Complaint and Request for Declaratory and Injunctive Relief [Dkt.11]. Defendant relies on the following evidence to support its Motion which is filed along with this Appendix.

Exhibit A	Affidavit of Jo Ann Perez
Exhibit A1	On-Line Application
Exhibit B	Certified Copy of Ordinance O2000-18 - City Code § 18.01.005
Exhibit C	Certified Copy of Ordinance CO52-16-09-08-E1 - City Code § 18.01.007(a) and 18.01.007(b)
Exhibit D	Affidavit of Dyanne Hargrove
Exhibit D1	Correspondence dated 01/21/22 to Michael Kleinman by CM
Exhibit D2	CM Receipt to 01/21/22 Michael Kleinman correspondence

Exhibit E	Affidavit of Matt Brosig
Exhibit F	Plaintiffs' Original Petition and Application for Temporary Restraining Order
	and Temporary Injunction
Exhibit G	Plaintiffs' Notice of Nonsuit
Exhibit H	Affidavit of Kevin Elliott
Exhibit H1	List of other businesses and notations on the inspections
Exhibit H2	Inspection Summary including narrative of the findings

Respectfully submitted,

Denton Navarro Rocha Bernal & Zech, P.C.

A Professional Corporation
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Austin, Texas 78745
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ristevens@rampagelaw.com

By:

SCOTT M. TSCHIRHART State Bar No. 24013655 ROXANA I. PEREZ STEVENS State Bar No. 24037264

Attorneys for Defendant City of Cedar Park

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served in accordance with the Federal Rules of Civil Procedure on this 18th day of July 2022, to the following:

Jeffrey G. Henry SPROUSE SHRADER SMITH PLLC 805 Las Cimas Parkway, Suite 350 Austin, Texas 78746

Tim Williams SPROUSE SHRADER SMITH PLLC P.O. Box 15008 Amarillo, Texas 79105 **E-FILE NOTIFICATION**

E-FILE NOTIFICATION

SCOTT M. TSCHIRHART

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

MICHAEL KLEINMAN,	§	
MMK HOLDINGS, LP and	§	
AUSPRO ENTERPRISES, LP	§	
	§	
Plaintiffs,	§	
V.	§	CIVIL ACTION NO. 1:22-cv-00527-LY
	§	
CITY OF CEDAR PARK	§	
	§	
Defendant.	§	

AFFIDAVIT OF JO ANN PEREZ

STATE OF TEXAS §
COUNTY OF WILLIAMSON §

Before me, the undersigned notary, on this day personally appeared JO ANN PEREZ a person whose identity is known to me. After being by me duly cautioned to tell the truth, subject to the penalties for perjury, he did affirm and does testify as follows:

"My name is JO ANN PEREZ. I am over the age of eighteen (18) years, am of sound mind, and am fully capable of making this affidavit. I am personally familiar with facts recited below, which are true and correct. I am the Utility Billing Manager for the City of Cedar Park ("City").

On November 7, 2021, AusPro Enterprises ("AusPro") submitted a Commercial Utility Service Application to the City requesting connection of water services for 1511 North Bell, Cedar Park, Tx 78613. A true and correct copy of the online application is attached hereto as Exhibit A1.

AusPro represented on the Commercial Utility Service Application that "I have already applied for a certificate of occupancy with Building Inspections." However, AusPro has not applied for a certificate of occupancy. If AusPro had correctly represented that AusPro had not applied for a certificate of occupancy, the City would not have approved AusPro's Commercial Utility Service Application. Any change in use or ownership of a commercial property in Cedar Park requires the new owner to apply for a new certificate of occupancy before water and sewer services can be connected.

AusPro also represented that the primary use of the property was "unknown at this time." If Plaintiff had correctly represented that it intended to open a prohibited "head shop" in violation of the City Zoning Ordinance, the City would not have approved AusPro's Commercial Utility Service Application.

AusPro has not filed an application for residential water and sewer service for any other structure or building on the property. If the City was aware that Auspro's water and sewer connection was shared with a residential building, the City would not have approved AusPro's Commercial Utility Service Application without approval of the City Manager.

Further Affiant sayeth not.

JO ANN PEREZ

SUBSCRIBED AND SWORN TO BEFORE ME on this <u>/</u> day of July 2022, to certify which witness my hand and official seal.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A1

From: webmaster@cedarparktexas.gov
To: Utility Billing Water Utility; Utility.Billing

Subject: City of Cedar Park, Texas: COMMERCIAL SERVICE

Date: Tuesday, September 7, 2021 5:23:44 PM

A new entry to a form/survey has been submitted.

Form Name: Commercial Utility Service Application

Date & Time: 09/07/2021 5:23 pm

Response #: 326 **Submitter ID:** 44526

IP address: 75.87.10.202 **Time to complete:** 11 min. , 40 sec.

Survey Details

Page 1

Welcome to the City of Cedar Park!

To establish new commercial utility services please enter the required information below:

Business Name:

AusPro Enterprises

Service Address:

**Connection can <u>ONLY</u> be done Monday - Friday, 8: 00 a.m. - 5:00 p.m. No Service on Holidays!

Street Address: 1511 North Bell, Cedar Park, Tx 78613

Unit: Not answered Connection Date: 09/08/2021

Legal Description:

Subdivision:Not answeredPhase:Not answeredSection:Not answeredLot:Not answeredBlock:Not answered

Contact Person:

Alan Robertson

Customer Information:

Mailing Address (If PO Box 13549

different than Service

Address):

 City, State, Zip:
 Austin, Tx 78711

 Tax ID:
 20-4459800

Email Address:capcity@gmail.comPhone Number:512-796-1579Alternate Phone Number:512-837-5337

Authorized Person(s):

Myles Lugo Michael Kleinman Eric Shufford Patterson Martin Alan Robertson Roland Denoie

Primary use for property: unknown at this time

Customer Confidentiality:

A resident may request that their account information be kept confidential. Please select one:

(O) YES – Request for Confidentiality

Customer Acknowledgment:

[x] I understand that I must pay the Utility Deposit based on meter(s) size by contacting Utility Billing at 512-401-5300.

 $[\times]$ I understand that account deposits vary depending on meter sizes and number of meters on the property.

[x] I understand the City will not be responsible for damages to the property or inside the property due to any water leak or open lines upon or after the City restores service.

[x] I have already applied for a certificate of occupancy with Building Inspections.

Myles Lugo

Confirmation:

Electronic Customer

Signature:

Today's Date 09/07/2021

The City of Cedar Park Water Utility Department strongly suggests that you close the private customer gate valve prior to the City arriving to restore service to this address.

Thank you,

City of Cedar Park, Texas

This is an automated message generated by Granicus. Please do not reply directly to this email.

EXHIBIT B



THE STATE OF TEXAS

8

COUNTIES OF WILLIAMSON

AND TRAVIS

§

CITY OF CEDAR PARK

§

I, LeAnn M. Quinn, City Secretary of the City of Cedar Park, Texas, do hereby certify that I am the custodian of the public records maintained by the City and the attached is a true and correct copy of Ordinance Number O2000-18, consisting of twenty (20) pages. This item was approved by the Cedar Park City Council at a regular scheduled meeting held on March 23, 2000.

CERTIFIED by my hand and seal of the City of Cedar Park, Texas on this 8th day of July, 2022.

LeAnn M. Quinn, TRMC

City Secretary

City of Cedar Park



ORDINANCE NO. 02000-18

AN ORDINANCE TO REVISE ARTICLE 11.100 CEDAR PARK WATER RATES, CHARGES, AND SERVICES REGULATIONS AND TO REVISE ARTICLE 11.200 SANITARY SEWER USER CHARGE SYSTEM IN CHAPTER 11 UTILITIES AND SOLID WASTE REGULATIONS AND ARTICLE 8.000 UTILITY RELATED FEES IN APPENDIX A; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR PARK, TEXAS:

SECTION 1: That ARTICLE 11.100: CEDAR PARK WATER RATES, CHARGES, AND SERVICES REGULATIONS in CHAPTER 11. UTILITIES AND SOLID WASTE REGULATIONS, is hereby amended as follows:

ARTICLE 11.100 <u>CEDAR PARK WATER RATES, CHARGES, AND SERVICE</u> REGULATIONS*

Sec. 11.101 Monthly Rates and Charges for Water Sales and Services

The monthly rates and charges for water sales and services rendered by the City of Cedar Park to customers either outside or within the corporate limits of the city (excluding wholesale customers) are established, fixed and prescribed as provided for in the fee schedule found in the appendix of this code.

Sec. 11.102 Additional Fees and Charges

In addition to the monthly rates above scheduled, the City of Cedar Park may assess fees and charges in connection with utility service to its customers as provided for in the fee schedule found in the appendix of this code.

Sec. 11.103 Deposits

(a) <u>Generally</u>. Security deposits in the amount set forth in this section shall be required of all customers upon application for water and sewer service. The deposit shall be held by the city, without payment of interest, as long as such service is continued; provided, that if all bills are paid on a timely basis, one year after service begins, upon application by the customer, the city shall refund one-half of such security deposit to the customer. The remainder of the security deposit shall be held and refunded upon termination of service in accordance with subsection (c) of this section. If a customer's account becomes delinquent more than two (2) times during any twelve (12) month period, the full security

deposit may be required as a condition of continued water or sewer service to that customer.

- (b) Former Customers. Notwithstanding any provision to the contrary herein, any customer receiving water from the Cedar Park Water Supply Corporation at the time of the passage of this section, shall have their membership fee credited as their deposit, as set out under Section 11.102 above. If said customer paid in excess of the amount specified for deposit, then the excess shall be returned by way of credit to said customer's water statement in such increments, and over such period of time, as the city may deem, in order to prevent undue financial disruption of the system. Should the membership fee be less than the amount specified for deposit, no further deposit will be required.
- (c) <u>Refund</u>. Upon termination of water service (and wastewater service if such service is provided by the city), such portion of the deposit as is not required to pay for damages to the water meter, accrued service charges, penalties, library fines, city property taxes, and court-imposed fines for which a final judgment has been issued, shall be refunded to the customer. Normal wear and tear in the ordinary course of use shall not be construed to be damage to the water meter under this section.

Sec. 11.104 Payment for Services

- (a) Manling The city shall mail a quantity bill to all cusuamys of the city's varietistic wastewater systems.
- (b) <u>No Consumption</u>. Customers with no monthly water consumption will be billed the minimum charge.
- (c) <u>Due Date</u>. Payment of bills is due fifteen (15) days from the date such bills are placed in the United States mail with proper postage affixed; provided, that if such 15th day is a weekend or holiday, payment shall be due on the next following business day.
- (d) <u>Returned Checks</u>. There will be a returned check charge in the amount indicated in <u>Sec. 11.103 above</u> the appendix of this code, for any check written for payment of services rendered by the city water or wastewater utilities and returned for any reason.
- (e) <u>Delinquency</u>. (1) Any bill not paid by the due date shall be deemed past due and a delinquent payment charge in the amount indicated in <u>Section 11.103</u> above the appendix of this code shall be assessed. When both water and wastewater services are included in a bill, payment in full for both services must be made or else the entire bill will be considered delinquent. All accounts more than ten (10) days past due are subject to service termination by the city. Reconnection shall be made only in accordance with the procedure set out in Section 11.107(b) of this article. (2) Persons of age 65 or older under the Vernon's Ann.Civ.St. art. 1446c-2 cannot be charged a penalty until bill is

past due by 25 days. The city adopts the state statute as it now exists or may hereafter be amended or replaced.

- (f) No Free Service. There shall be no free services provided. City departments using water and wastewater services shall pay the rate set out in Section 11.102 hereof the appendix of this code.
- (g) <u>Installment Payments</u>. In unusual circumstances and in limited cases, the city administrator may, at his or her discretion, enter into a written agreement with a customer for extended or installment payments.

Sec. 11.105 Connection to System

- (a) <u>Generally</u>. With the exception of those premises using water sources other than the city's water system as of the effective date of this section, all premises within the city shall hereafter be connected to the water system of the city for the purpose of all household uses and other uses intended for human consumption.
- (b) <u>Connection to Meters</u>. Connection to meters shall be the responsibility of the user, but shall be made only under the supervision of authorized personnel of the city. Water service customers shall install a cut-off valve outside their meter box on the underside thereof. Yard lines connected to meters shall not cross into private property or private easements not owned by the customer.
- (c) <u>Separate Meter Required</u>. Every building, structure or consumer in the city shall have a separate water meter; however, this provision may be waived for good cause upon written application by the water service customer, subject to approval by the city manager.
- (d) <u>Commingling Prohibited</u>. There shall be no connection to any water lines of the city, or any water lines served by water from the city's water system, to any other source of water, nor shall water from the city's water system in any manner be commingled with other water systems in direct contact with water from the city's water system.
- (e) <u>Design</u>. No water connection to the city's water system shall be made to any sprinkling, condensing, cooling, plumbing or any other system unless the said connection is of such a design to insure against any backflow or siphonage or sewage or contaminated water from said system into the drinking water supply.
- (f) <u>Violations</u>. Any person who shall make any connection in any manner to any water service, whether owned by the city or not, without the prior knowledge and consent of the owner of such service, shall be deemed in violation of this section. Any unauthorized operations of city utilities shall result in charges as outlined in the appendix of this code.

Sec. 11.106 Voluntary Disconnections

Water customers wishing to discontinue the use of water service shall give written notice thereof to the city water department. The water customer's deposit shall be refunded in accordance with the provisions of Section 11.104 (c) above. Failure to give such written notice shall render such water customer liable for the payment of all water bills to the premises until such notice has been given.

Sec. 11.107 Termination of Water Service

- (a) <u>Reasons for Termination Enumerated</u>. The city shall have the right to disconnect or refuse to connect or reconnect any water and/or wastewater service connection for the following reasons:
 - (1) Failure of the water or wastewater service customer to meet the applicable provisions of law;
 - (2) Violation by water or wastewater service customer of the rules and regulations pertaining to such service;
 - 17) Norman most of hills by water or waterwater actified absorber.
 - (4) Payment of a water or wastewater bill or security deposit with a check or draft which is not honored by the drawee;
 - (5) Willful and negligent waste of water due to leaks during an established emergency;
 - (6) Molesting any meter, seal, or other equipment controlling or regulating the supply of water or wastewater service;
 - (7) Theft or diversion and/or use of water or wastewater without payment therefor;
 - (8) Vacancy of premises;
 - (9) Selling, delivering, or furnishing water without written permission from the city water department, either on or off the consumer's premises; or
 - (10) Existence of a known dangerous condition for as long as the condition exists, in which case service may be terminated without notice.

(b) Termination Notice.

- (1) Except for circumstances requiring immediate action to protect life or property, termination of service shall not take place prior to the giving of at least five (5) days notice to the customer by mail of the intention of the city to so terminate. Said notice shall:
- (A) Be sent by mail to the last known billing address of the customer;
- (B) State the reason for the proposed termination;
- (C) State the customer's right to a hearing before such termination occurs; and
- (D) State that the customer who desires a hearing must request a hearing by contacting the city manager at a stated telephone number or in person before the expiration of five (5) days from the date of mailing.
- (c) <u>Appeal</u>. A customer objecting to the notice of termination must attempt to resolve the problem administratively. If said attempt fails, an appeal may be made in person to the city manager. The appeal shall be heard within five (5) days of the request. The following rules shall apply to such appeals:
 - (1) The city manager shall be the sole judge of the evidence, credibility of witnesses, and the facts, and shall render his decision at the close of the hearing, or as soon thereafter as possible.
 - (2) Should the decision of the city manager be against the customer, the customer shall be advised as to what action must be immediately taken to prevent termination of service.
 - (3) In the event the city manager's decision is in favor of the customer in whole or in part, appropriate corrective action shall be taken by the city.
- (d) Resumption of Water Service. If any of the reasons for termination set forth in Section 11.107(a) above continue for a period in excess of five (5) days after notice is mailed, and the customer has not requested a hearing within the specified time period, or if a hearing is requested and the city manager determines that the facts support the issuance of the termination, water and wastewater service to the user shall be shut off and the meter removed or meter box locked. Water service shall not be resumed until:
 - (1) <u>Generally</u>. The necessary reparations are made by the customer to the city in accordance with the city manager's ruling.
 - (2) <u>For Delinquency</u>. All amounts owing by the customer are paid in full, including any penalty charge, return check charge and reconnection fee, if applicable.

Sec. 11.108 Meters

- (a) Required. All premises using city water services must be equipped with an adequate water meter furnished by the city. Before any premise is occupied, a water meter shall be installed, all inspections must be made by the city's building inspector or arrangements made by said inspector. All large non-residential customers (those using an average of 25,000 gallons or more a month) shall be required to install a separate water meter if they have an irrigation system.
- (b) <u>Reading</u>. The water superintendent shall read or cause to be read every water meter used in the city at such times as are necessary in order that the customer's water bill may be sent out in accordance with the provisions of this section.
- (c) <u>Testing</u>. Any municipal water meter shall be tested upon receipt of a complaint by a water service customer and payment by said customer of a fee, as set forth in Section 11.103 above. If such meter is found to be more than three (3) percent from being accurate, it shall be repaired or replaced, and said fee for such testing shall be returned to the water service customer.
- (d) <u>Installation</u>. Meters shall be installed in a location that will provide easy access to the personnel of the city water department
- (e) <u>Fees.</u> Tap fees in accordance with the schedule in Section 11.103 the appendix of this article shall be collected prior to installation of any service.
- (f) <u>Maintenance</u>. The water service customer shall maintain and keep in good repair, yard lines connected to their water meter. Meter boxes shall be maintained from any overgrowth and vegetation to facilitate their accessibility by city personnel.

Sec. 11.109 Responsibility for Water Leakage

All property owners, their agents and tenants, shall be responsible as consumers for loss of water and property damage due to leakage in pipes or plumbing on the customer side of the meter or on the owner's property. In accordance with the city's Water Leak Adjustment Policy, customers may make a written request, once per year, for an adjustment due to substantial leakage as defined in the policy.

Sec. 11.110 Annual Rate Review Required

The city manager shall cause the city staff to conduct a review and assessment of the city's water and sewer rate structure to determine the existing and projected fiscal impact of the rate structure on the city. The city manager shall cause this review and assessment of the rate structure to be completed each year following the auditor's annual report to the city council and shall report to the city council the results of the

annual review and assessment along with recommendations for needed changes in the rate structure.

Sec. 11.111 Permit for Fire Hydrant Use

- (a) The city manager may issue permits authorizing companies or individuals to take water from City of Cedar Park fire hydrants. The annual fee for such permits shall be as provided for in the fee schedule found in the appendix of this code. The minimum monthly charge to permit holders shall be as provided for in the fee schedule found in the appendix of this code. All water use in excess of 2,000 gallons shall be charged at a rate as provided for in the fee schedule found in the appendix of this code. The city manager shall establish rules and regulations for the measurement of consumption and the methods of connection of the fire hydrants.
- (b) Persons taking water from a fire hydrant must have a permit and an approved fire hydrant wrench in their possession and must display such permit or wrench for inspection by city employees upon request. In order to protect the city's water system from pressure loss, before taking water from any fire hydrant, the permittee must notify the city water department and receive approval for such taking at a specific time and location.
- (c) The failure to display the above mentioned permit or wrench upon request by a city employee and the failure to obtain city approval prior to each instance of taking water at a specific time and location shall be offenses punishable by a fine and/or revocation of the permit.

(Ordinance 97-025 adopted 8/14/97)

SECTION 2: That ARTICLE 11.200 SANITARY SEWER USER CHARGE SYSTEM in CHAPTER 11, UTILITIES AND SOLID WASTE REGULATIONS, is hereby amended as follows:

ARTICLE 11.200 SANITARY SEWER USER CHARGE SYSTEM

Sec. 11.201 Classes of Consumers

There are hereby established three (3) classes of customers for purposes of sanitary sewer rates to be charged by the City of Cedar Park to all customers either outside or within the corporate limits of the city, excluding wholesale customers, as follows:

- (1) Residential (predominate use is as a domicile)
- (2) Non-residential (primary use is not as a domicile)
- (3) Large non-residential (yearly average water use over 25,000 gallons per month)

Sec. 11,202 Monthly Rates and Charges for Sanitary Sewer Service

The monthly rates and charges for sewer sales and services rendered by the City of Cedar Park to customers either outside or within the corporate limits of the city are established, fixed and prescribed as provided for in the fee schedule found in the appendix of this code.

Sec. 11.203 Existing Customers

Non-residential customers inside the city and those residential customers outside the city that have a separate City of Cedar Park water meter for irrigation, the city will base wastewater billing for domestic usage on actual monthly water consumption. The city will not use a wastewater average.

Sec. 11.204 New Customers

(a) <u>Residential.</u> For new residential customers, the city will impute a wastewater average of 8,000 gallons per month to new residential accounts until they have established a wastewater average. The city has the discretion to adjust the 8,000 gallon average when the customer has had an established wastewater average at another City of Cedar Park service address.

(b) Non-residential.

- (1) Except as provided by Section 11.203, if a customer establishes a new account at a service location where an earlier account established a wastewater average, the city will use the earlier wastewater average for wastewater service billing purposes until the new account establishes its own wastewater average.
- (2) Except as provided by Section 11.203, the city will impute a wastewater average of 8,000 gallons to new accounts until they have established a wastewater average. The city has the discretion to adjust the 8,000 gallon average when the customer has had an established wastewater average at another City of Cedar Park service address.
- (3) If, in the judgment of the city, the new customer will place a substantially different demand on the wastewater collection and treatment system, the city will bill the new customer for wastewater service based on actual metered water consumption until the new customer has established a wastewater average.
- (4) If a new customer has installed a separate City of Cedar Park water meter for irrigation, the city will base the new customer's wastewater billing for domestic usage on actual monthly water consumption. The city will not use a wastewater average.
- (c) <u>Large Non-residential</u> (Yearly monthly average over 25,000 gallons of water per month).
 - (1) The city will bill the new customer for wastewater service based on actual metered water consumption until the new customer has established a wastewater average. New large non-residential customers will be required to install a separate water meter for irrigation. The city will bill the customer each month for sewer service based on water consumption from the main meter less any consumption recorded on the irrigation meter.

Sec. 11.205 Connection Regulations

(a) All residential and commercial structures within the city, which are within the distances specified hereinafter of a sewer line of adequate size and capacity, shall be required within one hundred twenty (120) days from the date hereof to connect to such sewer line and discontinue use of any other sewage disposal system. If such connection

is not made as required, the city may disconnect water service to such structure and pursue other available legal remedies to compel such connection.

- (b) The owner of record of the property shall, upon connection, pay a connection fee as provided for in the fee schedule found in the appendix of this code; provided, that community impact fees have been paid for the property in accordance with Article 11.700 of this chapter and the city is not required to install sewer taps and service laterals. The owner shall pay a sewer tap inspection fee as provided for in the fee schedule instead of the connection fee.
- (c) The method for determining whether or not a residential or commercial entity is in a position to receive sewer service shall be determined as follows:
 - (1) The city sewer line is at an elevation such that the sewage from the entity can flow from the entity's outfall line to the city sewer line by gravity with a slope of at least 0.5 feet per one hundred (100) feet.
 - (2) The nearest point (vertical wall) of the residential or commercial structure is within two hundred (200) feet of the closest common property line between the property owner and the city right-of-way or easement in which the sewer line is located.
 - class mail delivery upon the owner and every henholder of any residential or commercial structure within the city which is in a position to receive sewer service as determined pursuant to Section 11.202(c)(1) and/or (2) above and which is not connected to the city sewer system, to connect such structure to the city's sewer system within sixty (60) days of mailing.
 - (2) If the structure is not connected to the city sewer system within such sixty (60) day period, a penalty of five hundred dollars (\$500.00) shall be assessed against such owner by the city.
 - (3) Notice of such penalty shall be sent to said owner and all lienholders at their last known address by certified and regular first class mail.
 - (4) The city manager shall file a notice of lien in the appropriate county deed or lien records showing the penalty as a lien against the property upon which the unconnected structure is located.
 - (5) The penalty and procedures specified in this Section 11.202(d) shall be repeated annually until such time as the structure is connected to the city sewer system.

Sec. 11.206 Installation Regulations

The following standards shall be conformed to in the installation of all sewer lines which connect, directly or indirectly, to the city's sewer system:

- (1) Sewer pipe shall be a minimum of four (4) inch diameter, Schedule 40 PVC.
- (2) Bedding shall be one and one-half (1-1/2) the diameter of the pipe.
- (3) All joints shall be glued and watertight.
- (3) Slope of the line shall be provided at the exit of the line from the structure, at the property line, and every fifty (50) feet.
- (5) All lines shall have a minimum cover of six (6) inches.
- (6) Clean out valves shall be provided at the exit of the line from the structure, at the property line, and every fifty (50) feet.
- (7) No right angles will be allowed. All angles shall be forty-five (45) degrees or less. There shall be a minimum of twenty-four (24) inches between all bends.

(Ordinance 97-025 adopted 8/14/97)

SECTION 3: That ARTICLE 8.000: UTILITY RELATED FEES in APPENDIX A FEE SCHEDULE, is hereby amended as follows:

ARTICLE 8.000 UTILITY RELATED FEES

Sec. 8.100 Monthly Rates and Charges for Water Sales and Services

The monthly rates and charges for water sales and services rendered by the City of Cedar Park to customers either outside or within the corporate limits of the city (excluding wholesale customers) are established, fixed and prescribed as follows:

(1) Minimum charges per meter size for first 2,000 gallons:

			Alt 1		Alt 2		Alt 3*
3/4" meter	\$ 15.40	\$	17.09	\$	17.71	\$	17.09
1" meter	\$ 25.10	\$	27.86	\$	28.87	\$	27.86
1-1/2" meter	\$ 56.95	\$	63.21	\$	65.49	\$	63.21
2" meter	\$ 98.50	\$	109.34	\$	113.28	\$	109.34
3" meter	\$ - 223.15	\$	247.70	\$	256.62	\$	247.70
4° moter	\$ 330.35	9	432 18	8	117 75	8	437 18
	* 15.5E U/I						
o" meler	\$4,580.45	\$1,	7541.30		847.52	\$1.	754.30
10" meter	\$2,466.85	\$2,	738.20	\$2	, 836. 88	\$2,7	738.20

^{*}Alternative 3 provides for the same initial rate increase as Alternative 1

(2) Volume charge on water use:

	<u>Alt 1</u>	Alt 2	<i>Alt 3*</i>
Over 2,000 gallons \$ 2.40 per 1,000 gallons	\$2.66 per	\$2.76 per	\$2.66 per
	1,000 gal.	1,000 gal.	1,000 gal.

 $[*]Alternative\ 3$ provides for the same initial rate increase as Alternative 1

(Ordinance 97-025 adopted 8/14/97)

Code reference— Chapter 11, Article 11.100, Section 11.101

Sec. 8.200 Additional Water Department Fees and Charges

In addition to the monthly rates above scheduled, the City of Cedar Park may assess the following fees and charges in connection with utility service to its customers:

(1) Deposit Fees.

Residential \$ 100.00

Residential \$50.00

Reduced deposit fee with letter of credit from previous utility or if the customer signs up for bill payment by direct draft. (if a customer's direct draft is returned by the payee's bank more than twice in one year, then a full \$100 deposit will be

required on the account)

All other customers Two times the minimum monthly charge

for the meter size for which application

is made

Temporary fire hydrant \$700.00

Meter test fee \$40.00

Reconnect fee \$50.00

Returned check or returned

direct draft fee \$25.00

Monthly delinquent payment charge 10% of the delinquent amount

- (2) <u>Reread Fee</u>. The city will reread any customer's water meter at the customer's request. If the reread meter was correctly read and there was no error on the part of the city, the customer shall be charged \$10.00. If the reread meter was read incorrectly, there shall be no charge to the customer.
- (3) <u>Transfer Fee</u>. The city will transfer water service from one location to another for a fee of \$25.00. A fee of \$50.00 will be charged to move a fire hydrant meter from one location to another for the same customer. Any outstanding bill on the current amount must be paid prior to transfer even if

it is not yet past due. The final bill for the original account will be transferred to and be payable on the due date of the new account.

- (4) <u>Temporary Service Fee</u>. Temporary water service is available for 5 days for a fee of \$35.00. The fee must be paid prior to service. Water consumption is not to exceed 2,000 gallons.
- (5) <u>Illegal Diversion Fee</u>. A fee will be imposed for the detection and confirmation of any utility diversion based upon the estimated cost of utility service not recorded on the meter, using the city's best estimated data. In addition, the customer shall pay the reconnect fee, the actual cost including labor for repairing damage to or replacement of the city's equipment. These charges are in addition to any that are imposed in criminal proceedings.

(6) Tap Fees.

(a) Where service lines must be installed and a water meter set by the city the water tap fee shall be:

3/4" meter	\$ 425.00
i" meter	\$ 675 00
2" meter	\$1,300.00
3" meter	\$ 300.00 + actual cost
4" meter	\$ 300.00 + actual cost
6" meter	\$ 300.00 + actual cost
8" meter	\$ 300.00 + actual cost
10" meter	\$ 300.00 + actual cost

(b) If service lines have been installed and the city is only required to inspect the connection and install a meter, the tap shall be:

3/4" meter	\$100.00
1" meter	\$175.00
1-1 /2" meter	\$400.00
2" meter	\$500.00
3" meter	\$300.00 + actual cost
4" meter	\$300.00 + actual cost
6" meter	\$300.00 + actual cost
8" meter	\$300.00 + actual cost
10" meter	\$300.00 + actual cost

(Ordinance 97-025 adopted 8/1497)

Code reference - Chapter 11, Article 11.100, Section 11.102

- (7) <u>Unauthorized Operation</u>. Any unauthorized operation of city utilities shall result in a fine of \$1,000 for the first offense and \$1,500 for each subsequent offense. These charges are in addition to any that are imposed in criminal proceedings.
- (8) <u>Lost or Stolen Meter</u>. There will be a charge of \$500.00 to replace any meter that is lost, stolen or moved from it's original location. This fee is intended for builders, contractors, and sub-contractors who intentionally move meters from one location to another to avoid the cost of setting up service at each location where they are working as called for in Section 11.105. Water service will not be restored until this fee has been paid.

Sec. 8.300 Water Deposits

- (a) Generally. Security deposits in the amount set forth in this section shall be required of all customers upon application for water and sewer service. This deposit may be paid by cash, check, credit card or direct draft. The deposit shall be held by the city, without payment of interest, as long as such service is continued; provided, that if all bills are paid on a timely basis, one year after service begins, upon application by the customer, the city shall refund one-half of such security deposit to the customer. The remainder of the security deposit shall be held and refunded upon termination of service in accordance with subsection (c) of this section. If a customer's account becomes delinquent more than two (2) times during any twelve (12) month period, the full security deposit may be required as a condition of continued water or sewer service to that customer.
- (b) <u>Former Customers</u>. Notwithstanding any provision to the contrary herein, any customer receiving water from the Cedar Park Water Supply Corporation at the time of the passage of this section, shall have their membership fee credited as their deposit, as set out under Section 11.102 above. If said customer paid in excess of the amount specified for deposit, then the excess shall be returned by way of credit to said customer's water statement in such increments, and over such period of time, as the city may deem, in order to prevent undue financial disruption of the system. Should the membership fee be less than the amount specified for deposit, no further deposit will be required.
- (c) <u>Refund</u>. Upon termination of water service (and wastewater service if such service is provided by the city), such portion of the deposit as is not required to pay for damages to the water meter, accrued service charges, penalties, library fines, city

property taxes, and court-imposed fines for which a final judgment has been issued, shall be refunded to the customer. Normal wear and tear in the ordinary course of use shall not be construed to be damage to the water meter under this section.

(Ordinance 97-025 adopted 8/14/97)

Code reference— Chapter 11, Article 11.100, Section 11.103

Sec. 8.400 Permit for Fire Hydrant Use

- (a) The city manager may issue permits authorizing companies or individuals to take water from City of Cedar Park fire hydrants. The annual fee for such permits shall be ten dollars (\$10.00). The minimum monthly charge to permit holders shall be fifteen dollars and forty cents (\$15.40) Alt. 1, seventeen dollars and nine cents (\$17.09) or Alt. 2, seventeen dollars and seventy-one cents (\$17.71) or Alt. 3, seventeen dollars and nine cents (\$17.09), which shall include the first two thousand (2,000) gallons of water consumed. All water use in excess of 2,000 gallons shall be charged at a rate of two dollars and forty cents (\$2.40) Alt, 1, two dollars and sixty-six cents (\$2.66) or Alt. 2, two dollars and seventy-six cents (\$2.76) or Alt. 3 two dollars and sixty-six cents regulations for the measurement of consumption and the methods of connection of the fire hydrants.
- (b) Persons taking water from a fire hydrant must have a permit and an approved fire hydrant wrench in their possession and must display such permit or wrench for inspection by city employees upon request. In order to protect the city's water system from pressure loss, before taking water from any fire hydrant, the permittee must notify the city water department and receive approval for such taking at a specific time and location.
- (c) The failure to display the above mentioned permit or wrench upon request by a city employee and the failure to obtain city approval prior to each instance of taking water at a specific time and location shall be offenses punishable by a fine and/or revocation of the permit.

(Ordinance 97-025 adopted 8/14/97)

Code reference— Chapter 11, Article 11.100, Section 11.111

Sec. 8.500 Monthly Rates and Charges for Sanitary Sewer Service

The monthly rates and charges for sewer sales and services rendered by the City of Cedar Park to customers either outside or within the corporate limits of the city below are established, fixed and prescribed as follows:

(1) <u>Residential.</u>				
		Alt 1	Alt 2	Alt 3*
0 - 2,000 gallons per month	\$18.80 minimum	\$20.87	\$21.62	\$20.87
Over 2,000 gallons per month	\$ 2.30 per 1,000 gallons	-	\$2.65 per 1,000 gal.	

^{*}Alternative 3 provides for the same initial rate increase as Alternative 1

(2) Non-residential.

0 - 2,000 gallons per month	\$18.80 minimum	<u>Alt 1</u> \$20.87	\$21.62	Alt 3* \$20.87
Over 2,000 gallons per month	\$2.30 per 1,000 gallons		\$2.65 per 1,000 gal.	

^{*}Alternative 3 provides for the same initial rate increase as Alternative 1

NOTE: Monthly charges shall be based on the average metered water usage for the prior year's winter months (December, January and February). Once per year, customers may request, in writing, an additional re-averaging.

(3) <u>Large Non-residential</u> (yearly average water use over 25,000 gallons per month).

Total monthly charge = Debt Service Charge + Flow Charge + Surcharge (if applicable)

Debt Service Charge = Last year's avg. monthly water use (gal) X \$18.80

20,000 gallons per month

Alt. 2 \$21.62

Alt. 3 \$20.87

Flow Charge = Last year's avg. monthly water use in gallons X \$2.30 Alt. 1 \$2.55 1,000 gallons Alt. 2 \$2.65 Alt. 3 \$2.55

(4) Surcharges for Excessive BOD and TSS (Cu)

Cu = Vu [(Bu-200) + (Su-200)S]

Cu = A user's charge for O & M per unit of time

Ct = Total operations and maintenance (O & M) costs per unit of time

Vc = 0 & M cost for transportation and treatment of a unit of wastewater volume

Vii = Volume commitmum from a user per and of time

B = Cost to treat one unit of BOD per 1,000 gallons (0.00025)

Bu = Measured BOD level for customer X or 200 mg/l, whichever is greater

S = Cost to treat one unit of TSS per 1,000 gallons (0.00001)

Su = Measured TSS level for customer X or 200 mg/l, whichever is greater

P = Cost to treat one unit of any pollutant

Pe = Measured level of any pollutant for customer X per unit of time

NOTE: For large commercial users, such as car washes, washaterias, etc., and industrial users, flow shall be based on the actual metered water sales for each month or on actual metered flow to the sewer system. For users that do not sewer a large portion of the water purchased, a percentage factor may be used to estimate monthly water discharged to the city sewer system, if the percentage factor is realistic and agreeable to both user and city.

Code reference— Chapter 11, Article 11.200, Section 11.202

Sec. 8.600 Sewer Connection Regulations

The owner of record of the property shall, upon connection pay seven hundred fifty dollar (\$750.00) connection fee; provided, that community impact fees have been paid for the property in accordance with Article 11.700 of this chapter and the city is not required to install sewer taps and service laterals. The owner shall pay a fifty dollar (\$50.00) sewer tap inspection fee instead of the seven hundred fifty dollar (\$750.00) connection fee.

Code reference— Chapter 11, Article 11.200, Section 11.205

Sec. 8.700 Amount and Assessment of Water Impact Fee

The city shall assess and collect on all new development and new connections to be served by the city's water system a Water Impact Fee of \$1,800.00 for each LUE.

Code reference— Chapter 11, Article 11.700, Section 11.703

Sec. 8.800 Amount and Assessment of Wastewater Impact Fee

The city shall assess and collect on all new development and new connections to be served by the city's wastewater treatment system a Wastewater Impact Fee of \$1,600.00 for each LUE.

Code reference— Chapter 11, Article 11.700, Section 11.704

SECTION 4: It is hereby declared to be the intention of the City of Cedar Park that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan, since the same would not have been enacted by the City of Cedar Park without the incorporation into this Plan of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 5: If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the

City Council of the City of Cedar Park in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 6: This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the
<u>March</u> , 2000.
READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Cedar Park at a regular meeting on the 9th day of March, 2000, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.
READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Cedar Park at a regular meeting on the 23rd day ofMarch, 2000, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.
APPROVED this 23x day of March, 2000.
George Denny, Mayor
ATTEST:
LeAnn Barnes, City Secretary

EXHIBIT C



THE STATE OF TEXAS

Ş

COUNTIES OF WILLIAMSON

AND TRAVIS

Ş

CITY OF CEDAR PARK

§

I, LeAnn M. Quinn, City Secretary of the City of Cedar Park, Texas, do hereby certify that I am the custodian of the public records maintained by the City and the attached is a true and correct copy of Ordinance Number CO52.16.09.08.E1, consisting of ten (10) pages. This item was approved by the Cedar Park City Council at a regular scheduled meeting held on September 8, 2016.

CERTIFIED by my hand and seal of the City of Cedar Park, Texas on this 8th day of July, 2022.

LeAnn M. Quinn, TRMC

City Secretary

City of Cedar Park



ORDINANCE NO. CO52.16.09.08.E.1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CEDAR PARK, TEXAS, AMENDING THE CEDAR PARK CODE OF ORDINANCES, CHAPTER 18 UTILITIES, ARTICLE 18.01 CEDAR PARK WATER RATES, CHARGES, AND SERVICE REGULATIONS; AND APPENDIX A FEE SCHEDULE, SECTION 8.300 ADDITIONAL WATER DEPARTMENT FEES AND CHARGES; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council desires to set appropriate water rates, charges, and service regulations for Cedar Park Utility customers; and

WHEREAS, the City Council desires to provide for more efficient service and additional convenience to the City of Cedar Park Utility customer; and

WHEREAS, pursuant to Texas Local Government Code Chapter 552, a homerule municipality may regulate its utility systems in a manner the protects the interests of the municipality and may require and receive compensation for services furnished by a public utility; and

WHEREAS, pursuant to Texas Local Government Code Section 552.0025 a municipality may require varying utility deposits for customers as it deems appropriate in each case; and

WHEREAS, pursuant to Texas Local Government Code Chapter 51, the City Council may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace, and order of the municipality; and

WHEREAS, the City Council finds that certain changes to the requirements for deposits from residential customers would add convenience to customers, create efficiencies in the collection of deposits and protect the interests of the municipality.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR PARK, TEXAS:

SECTION 1. That Cedar Park Code of Ordinances, Chapter 18 Utilities, Article 18.01 Cedar Park Water Rates, Charges, and Service Regulations; and Appendix A Fee Schedule, Section 8.300 Additional Water Department Fees and Charges, is hereby amended as provided in attached Exhibit A.

<u>SECTION 2.</u> That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

<u>SECTION 3.</u> That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 5. This Ordinance shall be and remain in full force and effect from and after the date of approval.

READ AND CONSIDERED ON FIRST READING by the City Council of Cedar Park at a regular meeting on the 25th day of August, 2016, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED, AND APPROVED ON SECOND AND FINAL READING by the City Council of Cedar Park at a regular meeting on the 8th day of September, 2016, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

CITY OF CEDAR PARK, TEXAS

Matthew Powell, Mayor

ATTEST:

LeAnn M. Quinn, TRMC

City Secretary

APPROVED AS TO FORM AND CONTENT:

J.P. LeCompte, City Attorney

ORDINANCE NO. CO52.16.09.08.E.1

EXHIBIT A

ARTICLE 18.01 <u>CEDAR PARK WATER RATES, CHARGES, AND SERVICE</u> REGULATIONS*

Sec. 18.01.001 Monthly rates and charges for water sales and services

The monthly rates and charges for water sales and services rendered by the Ceity to customers either outside or within the corporate limits of the Ceity (excluding wholesale customers) are established, fixed and prescribed as provided for in the fee schedule found in the appendix of this code.

Sec. 18.01.002 Additional fees and charges

In addition to the monthly rates above scheduled, the <u>Ceity may assess fees and charges in</u> connection with utility service to its customers as provided for in the <u>fee schedule</u> found in the appendix of this code.

Sec. 18.01.003 Deposits

- (a) Generally. Security deposits in the amount set forth in this section shall be required of all customers—in accordance with the fee schedule, and shall be assessed on the customer's first bill upon application for water and sewer service. The security deposit shall be held by the Ceity, without payment of interest, for the life of the account, or credited back to the account after twelve (12) consecutive months if the customer has not made more than one (1) delinquent payments during that time. —as long as such service is continued; provided, that if all bills are paid on a timely basis, one year after service begins, upon application by the customer, the city shall refund one half of such security deposit to the customer. The remainder of the security deposit shall be held and refunded upon termination of service in accordance with subsection (c) below. If a customer's account becomes delinquent more than one two (12) times during any twelve (12) month period, the full security deposit may be required as a condition of continued water or sewer service to that customer.
- (b) Former customers. Notwithstanding any provision to the contrary herein, any customer receiving water from the Cedar Park Water Supply Corporation at the time of the passage of this section, shall have their membership fee credited as their deposit, as set out under section 18.01.002 above. If said customer paid in excess of the amount specified for deposit, then the excess shall be returned by way of credit to said customer's water statement in such increments, and over such period of time, as the Ceity may deem, in order to prevent undue financial disruption of the system. Should the membership fee be less than the amount specified for deposit, no further deposit will be required.
- (c) <u>Refund</u>. Upon termination of water service (and wastewater service if such service is provided by the <u>Ceity</u>), such portion of the deposit as is not required to pay for damages to the water meter, accrued service charges, penalties, library fines, <u>Ceity</u> property taxes, and courtimposed fines for which a final judgment has been issued, shall be refunded to the customer.

Normal wear and tear in the ordinary course of use shall not be construed to be damage to the water meter under this article.

Sec. 18.01.004 Payment for services

- (a) <u>Mailing</u>. The <u>Ceity</u> shall mail a monthly bill to all customers of the <u>Ceity</u>'s water and wastewater systems.
- (b) <u>No consumption</u>. Customers with no monthly water consumption will be billed the minimum charge.
- (c) <u>Due date</u>. Payment of bills is due fifteen (15) days from the date such bills are placed in the United States Mail with proper postage affixed; provided, that if such 15th day is a weekend or holiday, payment shall be due on the next following business day.
- (d) <u>Returned checks</u>. There will be a returned check charge in the amount indicated in the appendix of this code, for any check written for payment of services rendered by the <u>Ceity water or wastewater utilities and returned for any reason.</u>

(e) <u>Delinquency</u>.

- (1) Any bill not paid by the due date shall be deemed past due and a delinquent payment charge in the amount indicated in the appendix of this code shall be assessed. When both water and wastewater services are included in a bill, payment in full for both services must be made or else the entire bill will be considered delinquent. All accounts more than ten (10) days past due are subject to service termination by the Ceity. Reconnection shall be made only in accordance with the procedure set out in section 18.01.007(b) of this article.
- (2) Persons of age 65 or older under the Vernon's Ann. Civ. St. Art. 1446c-2 cannot be charged a penalty until bill is past due by 25 days. The Ceity adopts the state statute as it now exists or may hereafter be amended or replaced.
- (f) No free service. There shall be no free services provided. City departments using water and wastewater services shall pay the rate set out in the appendix of this code.
- (g) <u>Installment payments</u>. In unusual circumstances and in limited cases, the <u>Ceity</u> administrator may, at his or her discretion, enter into a written agreement with a customer for extended or installment payments.

Sec. 18.01.007 Termination of water service

(a) <u>Reasons for termination enumerated</u>. The <u>Ceity shall have the right to disconnect or refuse to connect or reconnect any water and/or wastewater service connection for the following reasons:</u>

- (1) Failure of the water or wastewater service customer to meet the applicable provisions of law;
- (2) Violation by water or wastewater service customer of the rules and regulations pertaining to such service;
- (3) Nonpayment of bills by water or wastewater service customer;
- (4) Payment of a water or wastewater bill or security deposit with a check or draft which is not honored by the drawee;
- (5) Willful and negligent waste of water due to leaks during an established emergency;
- (6) Molesting any meter, seal, or other equipment controlling or regulating the supply of water or wastewater service;
- (7) Theft or diversion and/or use of water or wastewater without payment therefor;
- (8) Vacancy of premises;
- (9) Selling, delivering, or furnishing water without written permission from the Ceity water department, either on or off the consumer's premises; or
- (10) Existence of a known dangerous condition for as long as the condition exists, in which case service may be terminated without notice.

(b) <u>Termination notice</u>.

- (1) Except for circumstances requiring immediate action to protect, life or property, termination of service shall not take place prior to the giving of at least five (5) days notice to the customer by mail of the intention of the Ceity to so terminate. Said notice shall:
 - (A) Be sent by mail to the last known billing address of the customer;
 - (B) State the reason for the proposed termination;
 - (C) State the customer's right to a hearing before such termination occurs; and
 - (D) State that the customer who desires a hearing must request a hearing by contacting the <u>Ceity Mmanager</u> at a stated telephone number or in person before the expiration of five (5) days from the date of mailing.

- (d) Resumption of water service. If any of the reasons for termination set forth in subsection (a) above continue for a period in excess of five (5) days after notice is mailed, and the customer has not requested a hearing within the specified time period, or if a hearing is requested and the Ceity Mmanager determines that the facts support the issuance of the termination, water and wastewater service to the user shall be shut off and the meter removed or meter box locked. Water service shall not be resumed until:
 - (1) <u>Generally</u>. The necessary reparations are made by the customer to the <u>Ceity</u> in accordance with the <u>Ceity Mmanager</u>'s ruling.
 - (2) <u>For delinquency</u>. All amounts owing by the customer are paid in full, including any penalty charge, return check charge and reconnection fee, if applicable.

EXHIBIT A

ARTICLE 18.01 <u>CEDAR PARK WATER RATES, CHARGES, AND SERVICE</u> <u>REGULATIONS</u>*

Sec. 18.01.001 Monthly rates and charges for water sales and services

The monthly rates and charges for water sales and services rendered by the Ceity to customers either outside or within the corporate limits of the Ceity (excluding wholesale customers) are established, fixed and prescribed as provided for in the fee schedule found in the appendix of this code.

Sec. 18.01.002 Additional fees and charges

In addition to the monthly rates above scheduled, the <u>Ceity</u> may assess fees and charges in connection with utility service to its customers as provided for in the <u>fee schedule</u> found in the appendix of this code.

Sec. 18.01.003 Deposits

- (a) Generally. Security deposits in the amount set forth in this section shall be required of all eustomers in accordance with the fee schedule, and shall be assessed on the customer's first bill.upon application for water and sewer service. The security deposit shall be held by the Ceity, without payment of interest, for the life of the account, or credited back to the account after twelve (12) consecutive months if the customer has not made more than one (1) delinquent payments during that time. as long as such service is continued; provided, that if all bills are paid on a timely basis, one year after service begins, upon application by the customer, the city shall refund one half of such security deposit to the customer. The remainder of the security deposit shall be held and refunded upon termination of service in accordance with subsection (c) below. If a customer's account becomes delinquent more than one two (12) times during any twelve (12) month period, the full security deposit may be required as a condition of continued water or sewer service to that customer.
- (b) <u>Former customers</u>. Notwithstanding any provision to the contrary herein, any customer receiving water from the Cedar Park Water Supply Corporation at the time of the passage of this section, shall have their membership fee credited as their deposit, as set out under <u>section 18.01.002</u> above. If said customer paid in excess of the amount specified for deposit, then the excess shall be returned by way of credit to said customer's water statement in such increments, and over such period of time, as the <u>Ceity may deem</u>, in order to prevent undue financial disruption of the system. Should the membership fee be less than the amount specified for deposit, no further deposit will be required.
- (c) <u>Refund</u>. Upon termination of water service (and wastewater service if such service is provided by the <u>Ceity</u>), such portion of the deposit as is not required to pay for damages to the water meter, accrued service charges, penalties, library fines, <u>Ceity</u> property taxes, and courtimposed fines for which a final judgment has been issued, shall be refunded to the customer.

Normal wear and tear in the ordinary course of use shall not be construed to be damage to the water meter under this article.

Sec. 18.01.004 Payment for services

- (a) <u>Mailing</u>. The <u>Ceity</u> shall mail a monthly bill to all customers of the <u>Ceity</u>'s water and wastewater systems.
- (b) <u>No consumption</u>. Customers with no monthly water consumption will be billed the minimum charge.
- (c) <u>Due date</u>. Payment of bills is due fifteen (15) days from the date such bills are placed in the United States Mail with proper postage affixed; provided, that if such 15th day is a weekend or holiday, payment shall be due on the next following business day.
- (d) <u>Returned checks</u>. There will be a returned check charge in the amount indicated in the appendix of this code, for any check written for payment of services rendered by the <u>Ceity</u> water or wastewater utilities and returned for any reason.

(e) <u>Delinquency</u>.

- (1) Any bill not paid by the due date shall be deemed past due and a delinquent payment charge in the amount indicated in the appendix of this code shall be assessed. When both water and wastewater services are included in a bill, payment in full for both services must be made or else the entire bill will be considered delinquent. All accounts more than ten (10) days past due are subject to service termination by the Ceity. Reconnection shall be made only in accordance with the procedure set out in section 18.01.007(b) of this article.
- (2) Persons of age 65 or older under the Vernon's Ann. Civ. St. Art. 1446c-2 cannot be charged a penalty until bill is past due by 25 days. The Ceity adopts the state statute as it now exists or may hereafter be amended or replaced.
- (f) <u>No free service</u>. There shall be no free services provided. City departments using water and wastewater services shall pay the rate set out in the appendix of this code.
- (g) <u>Installment payments</u>. In unusual circumstances and in limited cases, the <u>Ceity</u> administrator may, at his or her discretion, enter into a written agreement with a customer for extended or installment payments.

Sec. 18.01.007 Termination of water service

(a) Reasons for termination enumerated. The Ceity shall have the right to disconnect or refuse to connect or reconnect any water and/or wastewater service connection for the following reasons:

- (1) Failure of the water or wastewater service customer to meet the applicable provisions of law;
- (2) Violation by water or wastewater service customer of the rules and regulations pertaining to such service;
- (3) Nonpayment of bills by water or wastewater service customer;
- (4) Payment of a water or wastewater bill or security deposit with a check or draft which is not honored by the drawee;
- (5) Willful and negligent waste of water due to leaks during an established emergency;
- (6) Molesting any meter, seal, or other equipment controlling or regulating the supply of water or wastewater service;
- (7) Theft or diversion and/or use of water or wastewater without payment therefor;
- (8) Vacancy of premises;
- (9) Selling, delivering, or furnishing water without written permission from the Ceity water department, either on or off the consumer's premises; or
- (10) Existence of a known dangerous condition for as long as the condition exists, in which case service may be terminated without notice.

(b) Termination notice.

- (1) Except for circumstances requiring immediate action to protect, life or property, termination of service shall not take place prior to the giving of at least five (5) days notice to the customer by mail of the intention of the Ceity to so terminate. Said notice shall:
 - (A) Be sent by mail to the last known billing address of the customer:
 - (B) State the reason for the proposed termination;
 - (C) State the customer's right to a hearing before such termination occurs; and
 - (D) State that the customer who desires a hearing must request a hearing by contacting the Ceity Mmanager at a stated telephone number or in person before the expiration of five (5) days from the date of mailing.

- (d) Resumption of water service. If any of the reasons for termination set forth in subsection (a) above continue for a period in excess of five (5) days after notice is mailed, and the customer has not requested a hearing within the specified time period, or if a hearing is requested and the Ceity Mmanager determines that the facts support the issuance of the termination, water and wastewater service to the user shall be shut off and the meter removed or meter box locked. Water service shall not be resumed until:
 - (1) <u>Generally</u>. The necessary reparations are made by the customer to the <u>Ceity</u> in accordance with the <u>Ceity Mmanager</u>'s ruling.
 - (2) <u>For delinquency</u>. All amounts owing by the customer are paid in full, including any penalty charge, return check charge and reconnection fee, if applicable.

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

MICHAEL KLEINMAN,	§	
MMK HOLDINGS, LP and	§ .	
AUSPRO ENTERPRISES, LP	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 1:22-cv-00527-LY
	§	
CITY OF CEDAR PARK	§	
	§	
Defendant.	§	

AFFIDAVIT OF DYANNE HARGROVE

STATE OF TEXAS §

COUNTY OF WILLIAMSON §

Before me, the undersigned notary, on this day personally appeared DYANNE HARGROVE a person whose identity is known to me. After being by me duly cautioned to tell the truth, subject to the penalties for perjury, he did affirm and does testify as follows:

"My name is DYANNE HARGROVE. I am over the age of eighteen (18) years, am of sound mind, and am fully capable of making this affidavit. I am personally familiar with facts recited below, which are true and correct.

I am a Paralegal for the City of Cedar Park ("City"). In connection with my duties, I handle correspondence for the City Hall daily. On January 21, 2022, I mailed the attached letter by applying postage, completing the attached certified mail receipt for our office records, and dropping the letter downstairs at reception for pick-up by the postal carrier. The postal carrier picks up mail from the City Hall every business day. Attached hereto is a true and correct copy of four (4) pages of documents reflecting same:

Exhibit D1: 01/21/2022 Correspondence to Michael Kleinman by CM

Exhibit D2: 01/21/2022 CM receipt

The records attached are exact duplicates of the originals which are true and correct.

Further Affiant sayeth not.

DYANNE HARGROVE

SUBSCRIBED AND SWORN TO BEFORE ME on this day of July 2022, to certify which witness my hand and official seal.

LEANN M. QUINN
My Notary ID # 11692430
Expires July 30, 2023

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT D1



January 21, 2022

Michael Kleinman Auspro Enterprises, LP PO Box 13549 Austin, Texas 78711-3549

Via CMRRR # 7020 0090 0001 9882 4293

Re: Notice of Termination of Water and Wastewater Service at 1511 N. Bell Cedar

Park, Texas 78613

Mr. Kleinman,

The purpose of this letter is to provide Auspro Enterprises, LP notice of the City's intent to terminate water and wastewater service to the property located at 1511 N. Bell Blvd., Cedar Park, Texas 78613 ("Property"). Cedar Park Code of Ordinances Section 18.01.007 authorizes the City to "disconnect...any water and/or wastewater service connection for...[f]ailure of the water or wastewater customer to meet the applicable provisions of law." Auspro Enterprises, LP is currently operating its business at the Property in violation of the City of Cedar Park Code of Ordinances, specifically, Sections 3.02.006, 11.01.032, 11.02.064, 13.03.03.04, 13.05.002(11), and 13.05.002(14).

Pursuant to Cedar Park Code of Ordinances Section 18.01.007, termination of service shall not take place prior to the giving of at least five (5) days' notice to the customer by mail of the intention of the City to terminate the service. Please be advised water and wastewater service to the Property will be terminated at 5:00 pm on Thursday, January 27, 2022.

Cedar Park Code of Ordinances Section 18.01.007 affords Auspro Enterprises, LP an opportunity for a hearing before the City Manager prior to the expiration of the five (5) days from the date of mailing of this notice. If you would like to schedule a hearing with the City Manager, please do so prior to 5:00 pm on January 27, 2022 by contacting City Management Executive Assistant, Joscelyn Voegeli at (512) 401-5010, or in person at 450 Cypress Creek Rd. Building 1, Cedar Park, Texas 78613.

Sincerely

Kent Meredith
Director of Finance

encl: CPCO Sec. 18.01.007

cc: Joscelyn Voegeli, City Management Executive Assistant

Sec. 18.01.007 Termination of water service

- (a) <u>Reasons for termination enumerated</u>. The City shall have the right to disconnect or refuse to connect or reconnect any water and/or wastewater service connection for the following reasons:
 - (1) Failure of the water or wastewater service customer to meet the applicable provisions of law;
 - (2) Violation by water or wastewater service customer of the rules and regulations pertaining to such service;
 - (3) Nonpayment of bills by water or wastewater service customer;
 - (4) Payment of a water or wastewater bill or security deposit with a check or draft which is not honored by the drawee;
 - (5) Willful and negligent waste of water due to leaks during an established emergency;
 - (6) Molesting any meter, seal, or other equipment controlling or regulating the supply of water or wastewater service;
 - (7) Theft or diversion and/or use of water or wastewater without payment therefor;
 - (8) Vacancy of premises;
 - (9) Selling, delivering, or furnishing water without written permission from the City water department, either on or off the consumer's premises; or
 - (10) Existence of a known dangerous condition for as long as the condition exists, in which case service may be terminated without notice.
- (b) <u>Termination notice</u>. Except for circumstances requiring immediate action to protect, life or property, termination of service shall not take place prior to the giving of at least five (5) days notice to the customer by mail of the intention of the City to so terminate. Said notice shall:
 - (1) Be sent by mail to the last known billing address of the customer;
 - (2) State the reason for the proposed termination;
 - (3) State the customer's right to a hearing before such termination occurs; and
 - (4) State that the customer who desires a hearing must request a hearing by contacting the City Manager at a stated telephone number or in person before the expiration of five (5) days from the date of mailing.
- (c) Resumption of water service. If any of the reasons for termination set forth in subsection (a) above continue for a period in excess of five (5) days after notice is mailed, and the customer has not requested a hearing within the specified time period, or if a hearing is requested and the City Manager determines that the facts support the issuance of the termination, water and wastewater service to the user shall be shut off and the meter removed or meter box locked. Water service shall not be resumed until:
 - (1) <u>Generally</u>. The necessary reparations are made by the customer to the City in accordance with the City Manager's ruling.
 - (2) <u>For delinquency</u>. All amounts owing by the customer are paid in full, including any penalty charge, return check charge and reconnection fee, if applicable.

Case 1:22-cv-00527-LY Document 23-1 Filed 07/18/22 Page 51 of 75

1/10/22, 4:11 PM

Franklin Legal Publishing, powered by CTS z2

(Ordinance CO52-16-09-08-D1 adopted 9/8/16)

EXHIBIT D2



EXHIBIT E

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

MICHAEL KLEINMAN,	§	
MMK HOLDINGS, LP and	§	
AUSPRO ENTERPRISES, LP	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 1:22-cv-00527-LY
	§	
CITY OF CEDAR PARK	§	
	§	
Defendant.	§	

AFFIDAVIT OF MATT BROSIG

STATE OF TEXAS §
COUNTY OF WILLIAMSON §

Before me, the undersigned notary, on this day personally appeared MATT BROSIG a person whose identity is known to me. After being by me duly cautioned to tell the truth, subject to the penalties for perjury, he did affirm and does testify as follows:

"My name is MATT BROSIG. I am over the age of eighteen (18) years, am of sound mind, and am fully capable of making this affidavit. I am personally familiar with facts recited below, which are true and correct. I am a Public Works Superintendent for the City of Cedar Park ("City").

On January 27, 2022 at 5:00 P.M. I supervised the City's disconnection of sewer service at 1511 N. Bell Blvd. While I was present on site, the water was cut off and the sewer line was plugged.

On February 7, 2022, the City checked the sewer line and found that the plug in the lateral line clean out had been removed. I contacted Cedar Park Police Department to report the illegal connection and request an officer accompaniment for the re-disconnection. The sewer line was again plugged while the police officers were present. On February 10, 2022, the City exposed the lateral line with an excavator, plugged and capped it, and backfilled over the work with road base.

Further Affiant sayeth not.

Case 1:22-cv-00527-LY Document 23-1 Filed 07/18/22 Page 56 of 75

MATTIBROSIG

SUBSCRIBED AND SWORN TO BEFORE ME on this 4 day of July 2022, to certify which witness my hand and official seal.

DEBRA HARGROVE My Notary ID # 10899977 Expires June 25, 2025

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT F

Case 1:22-cv-00527-LY Document 23-1 Filed 07/18/22 Page 58 of 75

Filed: 1/28/2022 4:16 PM Lisa David, District Clerk Williamson County, Texas Michele Darlene Rodriguez

		22-0°	135-C395
	CAUSE NO.	######################################	MANAGA HANI MANAGA MANA
AUSPRO ENTERPRISES	LP	§ §	IN THE DISTRICT COURT OF
	Plaintiff,	§ §	
vs.		§	WILLIAMSON COUNTY, TEXAS
CITY OF CEDAR PARK,		§ §	Williamson County - 395th Judicial District Court
D	efendant.	§	JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

Plaintiff AUSPRO ENTERPRISES LP files this Original Petition and Application for Temporary Restraining Order and Temporary Injunction, complaining of Defendant CITY OF CEDAR PARK, and would show the following:

I. PARTIES

- 1. Plaintiff Auspro Enterprises LP ("Auspro") is a Texas limited partnership.
- 2. Defendant City of Cedar Park (the "Defendant") is a Texas home rule municipality in Williamson County, TX, and may be served with process by serving its City Manager (?), at 450 Cypress Creek Road, Building One, Cedar Park, TX 78613.

II. DISCOVERY CONTROL PLAN

3. Discovery is intended to be conducted under Level III in accordance with Rule 190.4 of the Texas Rules of Civil Procedure.

III. JURISDICTION AND VENUE

- 4. The Court has jurisdiction because the amount in controversy is within the Court's jurisdictional limits.
- 5. Venue is proper in Williamson County, Texas under Tex. Civ. Prac. & Rem. Code §15.002, because Williamson County is the county in which all or a substantial part of the events

or omissions giving rise to the claim occurred.

IV. CONDITIONS PRECEDENT

6. All conditions precedent to the filing of this action have occurred or been performed.

V. TRCP 47 STATEMENT

7. Auspro seeks monetary relief of \$250,000 or less and non-monetary relief.

VI. BACKGROUND

- 8. Auspro owns the property at 1511 N Bell Blvd, Cedar Park, Williamson County TX 78613 (the "Premises"). Auspro operates a commercial business in the building located on the Premises. The Defendant provides water service to that building.
- 9. On January 27, 2022, without any prior notice, employees of the Defendant pulled the water meter at the Premises and terminated the building's water supply.
- 10. The Defendant water utility was contacted immediately and requested to restore the water service to the Premises, but the City refused to do so. The Defendant never stated its authority for terminating the water service.
- 11. Under City Ordinance Sec. 18.01.007(a), the Defendant may only terminate water service for the following reasons:
 - a. Failure of the water ... service customer to meet the applicable provisions of law;
 - b. Violation by the water ... service customer of the rules and regulations pertaining to such service;
 - c. Nonpayment of bills by the water ... customer; payment of a water ... bill or security deposit with a check or draft which is not honored by the drawee;
 - d. Willful and negligent waste of water due to leaks during an established emergency;

- e. Molesting any meter, seal or other equipment controlling or regulating the supply of water ... service;
- f. Theft or diversion and/or use of water ... without payment therefor;
- g. Vacancy of the premises;
- h. Selling, delivering, or furnishing water without written permission from the City water department, either on or off the consumer's premises; or
- i. Existence of a known dangerous condition for as long as the condition exists, in which case service may be terminated without notice.
- 12. None of the conditions in City Code 18.01.007(a) are applicable.
- 13. Under City Code 18.01.007(b), except for circumstances requiring immediate action to protect life or property, the Defendant may not terminate water service without first giving the water service customer at least five (5) days' notice of the Defendant's intention to terminate the service.
- 14. The Defendant never provided notice to Auspro of its intent to terminate water service at the Premises.

15.

VII. CAUSES OF ACTION

A. Breach of Contract

16. Auspro sues Defendant for breach of contract based on the provision of water service, which the Defendant terminated in violation of Defendant's own code requirements in Sec. 18.0107.

B. DUE PROCESS

17. Auspro sues Defendant for violation of the Due Process Clauses of the United States and Texas Constitutions.

18. By terminating water service to the Premises without cause and without providing Plaintiff prior notice or an opportunity to be heard, the Plaintiff violated its own code requirements and the Due Process Clauses of the United States and Texas Constitutions.

C. DECLARATORY JUDGMENT

19. Pursuant to Section 37.001 Tex. Civ. Prac. & Rem. Code, the Court has the power to declare rights, status and other legal relations when the subject matter of the relief involves a deed, written contract, or other writings. Auspro has the right under Texas law and contract to the provision of water services and asks this Court to declare that Defendant has violated its own ordinances in terminating water service to the Premises.

VIII. REQUEST FOR TEMPROARY RESTRAINING ORDER

- 20. Auspro incorporates the allegations in the foregoing paragraphs as if set forth fully herein.
- 21. Auspro requests that the Court enter a Temporary Restraining Order against Defendant, together with its officers, agents, servants, employees, and those acting in active concert with Defendant, to immediately cease from doing the following:
 - 22. Refusing to restore water service to the Premises;
- 23. Violating Defendant's own codes related to the provision of water service to the Premises;
- 24. Removing any water meters from Premises once water service has been restored, and disconnecting water service to the Premises.

IX. REQUEST FOR INJUNCTIVE RELIEF

25. Auspro incorporates the allegations in the foregoing paragraphs as if set forth fully herein.

- 26. Auspro has asserted claims against Defendant for breach of contract, due process and declaratory judgment.
- 27. Pursuant to Sections 65.011(1), (2), (3) and (5), Tex. Civ. Prac. & Rem. Code, Auspro would show the following as grounds for his injunctive relief:
 - a. Defendant has shut off water service to the Premises. If Defendant is allowed to continue to refuse to reconnect water service to the Premises Auspro's business will suffer irreparable harm, which would tend to render any judgment in this lawsuit ineffectual;
 - b. the applicant is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions;
 - c. the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant;
 - d. a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual;
 - e. a cloud would be placed on the title of real property being sold under an execution against a party having no interest in the real property subject to execution at the time of sale, irrespective of any remedy at law; or
 - f. irreparable injury to real or personal property is threatened, irrespective of any remedy at law.

PRAYER

WHEREFORE, Auspro Enterprises LP prays the Court enter a Temporary Restraining

Order against the City of Cedar Park as requested herein, schedule hearing on its Application for Temporary Injunction against the City of Cedar Park, and upon trial of this matter enter judgment against the City of Cedar Park and award to Auspro such other legal and equitable relief to which Auspro is entitled.

Respectfully submitted,

SPROUSE SHRADER SMITH PLLC

/s/ Eric L. Gomez

Eric L. Gomez, SBN 24083084

Email: eric.gomez@sprouselaw.com

701 S. Taylor, Suite 500 (79101)

P.O. Box 15008

Amarillo, Texas 79105-5008

Tel: (806) 468-3300; Fax: (806) 373-3454

ATTORNEYS FOR PLAINTIFF

CAUSE NO)	
AUSPRO ENTERPRISES LP	***************************************	IN THE DISTRICT COURT OF
Plaintiff,	8	
2,	§	
vs.	§	JUDICIAL DISTRICT
CITY OF CEDAR PARK,	§ 8	
CITTOT CEDARTARIC,	8 8	
Defendant.	§	WILLIAMSON COUNTY, TEXAS
STATE OF TEXAS, § COUNTY OF WILLIAMSON §	anne anne de les applicates de la companya por la companya de la companya de la companya de la companya de la c	MICHAEL KLEINMAN
in the present cause of action. As such, I h	ave of auth	I Partner of Auspro Enterprises LP, Plaintiff nority to speak on behalf of the Plaintiff. My 3111 E. Cesar Chavez St, Austin, TX 78702. s true and correct." Michael Weinman (Jan 28, 2022 15:54 CST) AFFIANT Jan 28, 2022
		DATE

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Judy Yhu on behalf of Eric Gomez Bar No. 24083084 judy.yhu@sprouselaw.com Envelope ID: 61270848 Status as of 1/28/2022 4:26 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Eric Gomez		eric.gomez@SPROUSELAW.com	1/28/2022 4:16:50 PM	SENT
Judy Yhu		judy.yhu@sprouselaw.com	1/28/2022 4:16:50 PM	SENT

EXHIBIT G



Lisa David

DISTRICT CLERK

P.O. Box 24, Georgetown, Texas 78627 512.943.1212 Fax 512.943.1222

February 01, 2022

TO: City of Cedar Park City Manager

450 Cypress Creed Road

Building One

Cedar Park TX 78613

NOTICE OF NONSUIT

CAUSE # 22-0135-C395

395th Judicial District Court

File Date: January 31, 2022

IN RE: AUSPRO ENTERPRISE LP VS. CITY OF CEDAR PARK

A NOTICE OF NONSUIT HAS BEEN FILED IN THE OFFICE OF THE DISTRICT CLERK.

LISA DAVID, DISTRICT CLERK, WILLIAMSON COUNTY, TEXAS

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

MICHAEL KLEINMAN,	§	
MMK HOLDINGS, LP and	§	
AUSPRO ENTERPRISES, LP	§	
	§	
Plaintiffs,	§	
v .	§	CIVIL ACTION NO. 1:22-cv-00527-LY
	§	
CITY OF CEDAR PARK	§	
	§	
Defendant.	§	

AFFIDAVIT OF KEVIN ELLIOTT

STATE OF TEXAS §

COUNTY OF WILLIAMSON §

Before me, the undersigned notary, on this day personally appeared KEVIN ELLIOTT a person whose identity is known to me. After being by me duly cautioned to tell the truth, subject to the penalties for perjury, he did affirm and does testify as follows:

"My name is KEVIN ELLIOTT. I am over the age of eighteen (18) years, am of sound mind, and am fully capable of making this affidavit. I am personally familiar with facts recited below, which are true and correct. I am a Code Compliance Officer for the City of Cedar Park ("City).

On May 11, 2022, I obtained a warrant to search the Planet K property. Attached hereto as Exhibit "H2" is a true and correct copy of the Inspection Summary that I prepared including a narrative of the findings (which include additional City Code violations) and photographs of bongs, pipes and other drug paraphernalia. The sale of these items makes the business a prohibited "head shop" under the City Code.

In early in May of 2022, the City inspected thirteen (13) other businesses that could have been operating as prohibited head shops. A true and correct list of those businesses is attached as Exhibit H1.

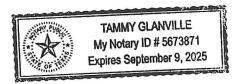
All of these thirteen businesses were operating under a current and valid certificate of occupancy. Of the thirteen businesses, only four (4) were found to be selling head shop items. Notices of Violation were issued for the four businesses

and, as of July 5, 2022, each of the businesses have since come into compliance by ceasing to sell items that would violate the City's prohibition against operating head shops.

Further Affiant sayeth not.

SUBSCRIBED AND SWORN TO BEFORE ME on this 15th day of July 2022, to certify

which witness my hand and official seal.



NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT H1

Case 1:22-cv-00527-LY Document 23-1 Filed 07/18/22 Page 72 of 75

Name	Address	Notes
		glass pipes and bongs observed; Amy Link spoke with owner on
		5/18/22. The owner relayed that the glass pipes and bongs have
Artisan Vapor and CBD	251 N Bell Blvd #104	been removed from the store.
CBD American Shaman of Cedar Park	700 E Whitestone Blvd Suite 103	no head shop items/paraphernalia observed
CBD Cedar Park/Austin	200 Buttercup Blvd	chiropractor; no head shop items/paraphernalia observed
Cigar Depot	601 E Whitestone #210	no head shop items/paraphernalia observed
Cloudhouse Vapor	604 N Bell Blvd #2216	no head shop items/paraphernalia observed
Craving Vapor	1525 Cypress Creek Road	no head shop items/paraphernalia observed
Drip n Rip Vapes Vapor Vape Shop	401 E Whitestone Blvd #A103	glass pipes and bongs observed
Higher Luck Grocery store	1906 N Bell Blvd	glass pipes observed
J Heart CBD and Delta 8	908 W Whitestone Blvd Suite 300	no head shop items/paraphernalia observed
Lakeline Food Stop	1075 N Lakeline Blvd #100	glass pipes and bongs observed
Pinnacle Essentials	1625 N Bell Blvd A	no head shop items/paraphernalia observed
Pure Innate	345 Cypress Creek Road	chiropractor; no head shop items/paraphernalia observed
Restart CBD	13402 Anderson Mill Road #204	not a store front; no head shop items/paraphernalia observed

EXHIBIT H2

Planet K Inspection Summary

I served the warrant at 2:00 PM on May 11, 2022. Code Compliance Officer Amber Smith, City of Cedar Park Chief Building Official Ken Crow, City of Cedar Park Police Sargent Chris Walts and Police Officer Turner accompanied me.

As I walked in to the store, I noticed the smell of incense. There were 4 employees working in the store. I introduced myself and placed the warrant on the counter. Then I started taking pictures. Officer Smith also started taking pictures and Ken Crow started a building inspection. As I walked and took pictures, I noticed cigars lining the wall and in the glass case. There was Delta 8 and Delta 9 candies, vapes and smokables. I also noticed in another glass case Vape products, such as e juice and vaporizers.

There are hundreds of glass pipes in one case. There are also silicone pipes and there are four entire walls of bongs in many shapes, sizes and colors. There is also a case of DAB Pens and vaporizers.

On one wall, there are products for plants, such as fertilizer and chemicals, some with pictures of cannabis leaves.

There is a wall and a half of various sexually oriented products.

I observed a few gift items, such as bandannas sunglasses clothing posters and Frisbees. There are also some drinks and snacks.

During the inspection, I also inspected the water situation and found that there is no working toilet in the restroom and the lavatory in the restroom had some residual water in the lines when I turned it on. The other lavatory had no water at all. There is portable toilet behind the building that is being used. I believe United Site Services had recently serviced it as it was clean. There was no running water on the property.

Chief Building Official K. C. Crow found the following building code violations on the property:

- No functioning restroom facility.
- Wiring within the rear, vacant area of Bldg. A is not installed per code...NM cable (romex) not properly protected/supported.
- Open breaker slots in main panel installed on south end of Bldg. B (residential unit).
- Main panel on Bldg. B is not labeled.
- Wiring (possibly for a clothes dryer?) exiting the bottom of electric panel on Bldg. B is not per code. Wiring type is not rated for exterior exposure and conductor is not protected within a raceway/conduit.
- Open plumbing vents between Bldg. B and wood privacy fence along west side of building. Vents need to be extended upward to prevent sewer gas infiltration into the structure.
- Exposed/unprotected PVC piping along south side of Bldg. B

Photos taken in Planet K

Gas Pipes



Dabbing devices



Bongs





Growing products



Fentanyl test kits

